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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No 574.

WILLIAM K. TUBMAN, PLAINTIFF IN ERROR,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE BALTIMORE AND POTOMAC RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE WASHINGTON, OHIO AND WESTERN RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, THE NORFOLK AND WESTERN RAILROAD COMPANY, AND THE VIRGINIA MIDLAND RAILWAY COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 22, 1903.

(18,802.)

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1 In the Court of Appeals of the District of Columbia.

WILLIAM K. TUBMAN, Appellant,
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL. } No. 1244.

Supreme Court of the District of Columbia.

WILLIAM K. TUBMAN, Plaintiff,
vs.
THE BALTIMORE & OHIO RAILROAD COMPANY, The Baltimore & Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio & Western Railroad Company, The Chesapeake & Ohio Railway Company, The Norfolk & Western Railroad Company, and The Virginia Midland Railway Company. } No. 37799. At Law.

UNITED STATES OF AMERICA, } *ss:*
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Declaration, &c.

Filed March 26, 1895.

In the Supreme Court of the District of Columbia.

WILLIAM K. TUBMAN, Plaintiff,
vs.
THE BALTIMORE & OHIO RAILROAD COMPANY, The Baltimore & Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio & Western Railroad Company, The Chesapeake & Ohio Railway Company, The Norfolk & Western Railroad Company, and The Virginia Midland Railway Company. } At Law. No. 37799.

The plaintiff, William K. Tubman, sues the above-named defendants, The Baltimore & Ohio Railroad Company, a corpora-
2 tion organized and existing under the laws of the State of Maryland; The Baltimore & Potomac Railroad Company, a corporation organized and existing under the laws of the State of Maryland; The Pennsylvania Railroad Company, a corporation or-

ganized and existing under the laws of the State of Pennsylvania; The Washington, Ohio & Western Railroad Company, a corporation organized and existing under the laws of the State of West Virginia; The Chesapeake & Ohio Railway Company, a corporation organized and existing under the laws of the States of Virginia and West Virginia; The Norfolk & Western Railroad Company, a corporation organized and existing under the laws of the States of Virginia and West Virginia, and The Virginia Midland Railway Company, a corporation organized and existing under the laws of the State of Virginia, for that the said defendant railroad companies are, and at the time and times hereinafter mentioned were, bodies corporate and politic, chartered and existing under the laws of the respective States aforesaid, and, under and by virtue of certain acts of Congress of the United States, doing business as such corporations, and having their respective offices and agents, in the District of Columbia, for the transaction of the business of such corporations therein; that the said defendants are, and were, engaged in the business of interstate commerce, by the transportation of freight and passengers between the various States of the United States and the District of Columbia, and between the District of Columbia and the said various States, and that said corporations have been so engaged in such interstate commerce for the period of more than ten years last past.

That, heretofore, to wit, on the 12th day of June, A. D. 1877, letters patent No. 192,014 were duly issued by the United States Patent Office to George S. Roberts for a new, useful and valuable invention, to wit, an "Improvement in the construction or formation of the side of a railway car," and which patent was afterwards, to wit, on the 23rd day of April, 1885, for a valuable consideration, assigned by the said Roberts to the said plaintiff, William K. Tubman, and that, ever since the said assignment, the plaintiff has been, and still is, the sole owner thereof, and of all rights, accruing thereunder; that said invention was designed, and intended to be used, and was used, for the purpose of commerce and the transportation of passengers between the several States of the United States and the District of Columbia, and between the said District of Columbia and the said several States.

Plaintiff further says that, being so the sole owner of said patent, from the said 23rd day of April, 1885, the plaintiff, at divers times, endeavored to enter into negotiations with divers railroad companies, bodies corporate of different States, for the purpose of having the said invention adopted and used in the construction of railway cars, for a proper consideration to be paid to him for the same, for transportation and use on railroads; that plaintiff likewise endeavored to enter into negotiations with the Wason Manufacturing
3 Company, of Springfield, Mass., a corporation engaged in the manufacture of cars, for the purpose of having adopted and used the said invention in the construction of cars to be used as aforesaid, and in divers other ways endeavored to prosecute, and obtain the adoption and use of, said invention for the purposes aforesaid.

Plaintiff further says that the said Wason Manufacturing Company did construct cars, and did adopt, in such construction, the invention aforesaid, without any license or authority from the said plaintiff, or any lawful right so to do, and against his protest; and that the said cars, so constructed, were used by the Boston & Albany Railroad Company in interstate traffic and commerce; that the Pullman's Palace Car Company, a corporation engaged in the construction and operation of cars on the roads of defendants, hereinbefore named, constructed a large number of cars, embodying therein the said invention of plaintiff, and operated said cars, in the transportation of passengers, between the several States of the United States and the District of Columbia, and between the District of Columbia and the said several States, and, by the construction and use of said cars, as aforesaid, said patent, so owned by the plaintiff as aforesaid, was infringed.

Plaintiff further says that the said defendants, and divers other railroad and railway companies, combined, agreed and conspired together, under the name and style of the Eastern Railroad Association, to restrain and control the use of patented inventions applicable to use on railways, and designed to be used in transportation between the several States of the United States and the District of Columbia, and between the District of Columbia and the said several States, to monopolize such use, and to monopolize and control the price of such inventions, and the price of the license for the use thereof, and to prevent such use except upon such terms as they might dictate or impose, and, generally, to monopolize and control, between corporations and persons of different States, the trade in patented inventions applicable to use on railways, and designed for use in the transportation on railways of persons and property between the several States of the United States and the District of Columbia, and between the District of Columbia and said several States, and especially to contest any claim, made by any patentee, or owner of such patent, against any member of such combination and association, and to dictate and control the basis of any settlement that might be proposed for any infringement of any such patent by any member of said combination or association with the inventor or owner of the patent, and to prevent the use of any patented invention without the assent of said combination, and to prevent the adoption by any railroad company embraced within said combination or association of any invention at a fixed royalty without the assent of said combination or association, and to embar-ass the inventor in respect of the ascertainment of damages for any infringement; and, in pursuance of said combination, they did interfere with negotiations for the adoption and use, by said railroad and rail-
4 way companies, bodies corporate of different States, as aforesaid, of the said patented invention so owned by plaintiff, as aforesaid, and did interfere with and restrain said trade and commerce between the said several States and between the said several States, and the District of Columbia, and between the District of Columbia and the said several States, and did prevent the manufacture, adoption and use, by divers companies and corporations of different

States, of said patent so owned by plaintiff, and, further, for the purpose of effecting the objects of said combination, association and conspiracy, as aforesaid, the said defendants, respectively, together with divers other corporations embraced in said combination, association and conspiracy, contributed large sums of money, and employed counsel, whose duty it was made to contest claims for infringements of patents, as hereinbefore averred.

Plaintiff further says that the said Wason Manufacturing Company and the said Pullman's Palace Car Company having so infringed the said patent as aforesaid, the plaintiff, on the 13th day of December 1887, instituted a suit against the said Wason Manufacturing Company in the circuit court of the United States for the district of Massachusetts, for said infringement; that he also, on the 9th day of September 1890, instituted a suit against the said defendant, The Baltimore & Potomac Railroad Company, in the circuit court of the United States for the district of Maryland; that he also, on the 26th day of April 1893, instituted a suit against the said defendant, The Pennsylvania Railroad Company, in the circuit court of the United States for the eastern district of Pennsylvania; and that he also, in the month of April 1893, instituted a suit against the New York, New Haven & Hartford Railroad Company, in the circuit court of the United States for the district of Connecticut, for the infringement of said patent by said above-named railroad companies.

Plaintiff further says that, for the purpose of defeating the plaintiff in his said suits, and of preventing him from securing proper compensation for the use of said patent so owned by him as aforesaid, and of preventing the said defendants from using the same, the said defendants, associated together as aforesaid, and the other railroad corporations so associated with them pursuant to said combination and conspiracy aforesaid, employed counsel to defend the said suits; that said counsel, on behalf of said associated companies, did appear and actively participate therein, but without appearing of record as such counsel; that the said defendants, so combined, associated and confederated together, having employed, searchers, witnesses, commissioners, typewriters, stenographers, model-makers and others, have furnished free transportation for the persons employed for the purposes aforesaid, and have therein and otherwise expended large sums of money in embarrassing, impeding and defeating the plaintiff in the prosecution of his said suits, and each thereof, and thereby have subjected the said plaintiff to great trouble, inconvenience, expense and loss of time; that, for the purpose of embarrassing, impeding and defeating the plaintiff in his said suits, the said association and combination has procured false evidence, and caused the same to be used in said suit in the circuit court of the United States for the district of Massachusetts, and to be used in said suit in the said circuit court of the United States for the eastern district of Pennsylvania, all of which was done for the express purpose of preventing the plaintiff from deriving any benefit whatever from his said patent.

Whereby, and by reason of the premises aforesaid, plaintiff has been damaged in a large sum of money, to wit, in the sum of one hundred thousand dollars ($100,000), whereupon he brings this suit and claims of the said defendants the sum of one hundred thousand dollars ($100,000), and costs, and demands judgment therefor.

SHELLABARGER & WILSON,
Attorneys of Plaintiff.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise, judgment.

SHELLABARGER & WILSON,
Attorneys of Plaintiff.

Summons.

Issued March 26, 1895.

In the Supreme Court of the District of Columbia.

WILLIAM K. TUBMAN, Plaintiff, *vs.* THE BALTIMORE & OHIO RAILROAD COMPANY, The Baltimore & Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio & Western Railroad Company, The Chesapeake & Ohio Railway Company, The Norfolk & Western Railroad Company, The Virginia Midland Railway Company, Defendants.	At Law.	No. 37799.

The President of the United States to the defendants, Greeting:

You are hereby commanded to appear in this court on or before the twentieth day, exclusive of Sundays and legal holidays, after the day of the service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness, the Honorable Edward F. Bingham, chief [SEAL.] justice of said court, the 26th day of March, A. D. 1895.

JOHN R. YOUNG, *Clerk.*

6 *Marshal's Return.*

Served copies of the declaration, notice to plead, affidavit, and this summons, on the defendants, The Baltimore & Ohio Railroad Company by service on Wm. Alvey, agent, M'ch 26, 1895.

The Baltimore and Potomac Railroad Company by service on Dan'l P. McKeever, agent and The Chesapeake and Ohio Railway Company by service on Geo. M. Bond, agent M'ch 27, 1895. The Pennsylvania Railroad Company by service on C. Studds, agent,

The Washington, Ohio and Western Railroad Company by service on L. S. Brown, agent and The Virginia Midland Railway Company by service on L. S. Brown agent, M'ch 28, 1895, and The Norfolk and Western Railroad Company by service on E. J. Lockwood, agent the 29th day of M'ch, 1895.

ALBERT A. WILSON, *Marshal.*

Demurrer of Pennsylvania R. R. Co.

Filed June 17, 1895.

In the Supreme Court of the District of Columbia.

* * * * * * *

The defendant, The Pennsylvania Railroad Company, says that the declaration of the plaintiff in the above-entitled cause is bad in substance.

ENOCH TOTTEN,
Attorney for the Defendant The Pennsylvania Railroad Company.

NOTE.—Among the matters of law intended to be argued in support of the above demurrer, are the following:

1. The plaintiff, in his said declaration, has fail- to aver or charge upon this defendant, individually or jointly with the other defendants, or any of them, the doing of any illegal or wrongful act, or the omission of any legal duty, whereby the plaintiff was injured, or his rights or property invaded, interrupted or interfered with.
2. The said plaintiff has not, in and by his said declaration, stated facts sufficient to constitute a cause of action.
3. There is no averment in the said declaration that any of the actions or suits mentioned in the said declaration, wherein the acts complained of are alleged to have been *sub*mitted, have ever been brought to trial, or have ever been actually tried.
4. There is no averment in the said declaration that a judgment has ever been rendered in any of the said suits or causes of action mentioned in the said declaration.

7 *Demurrer of the Baltimore & Potomac Railroad Co.*

Filed June 17, 1895.

In the Supreme Court of the District of Columbia.

* * * * * * *

The defendant, The Baltimore and Potomac Railroad Company, says that the declaration of the plaintiff in the above-entitled cause is bad in substance.

ENOCH TOTTEN,
Attorney for the Defendant The Baltimore & Potomac R. R. Co.

NOTE.—Among the matters of law intended to be argued in support of the above demurrer, are the following:

1. The plaintiff, in his said declaration, has failed to aver or charge upon this defendant, individually or jointly with the other defendants, or any of them, the doing of any illegal or wrongful act, or the omission of any legal duty, whereby the plaintiff was injured, or his rights or property invaded, interrupted, or interfered with.
2. The said plaintiff has not in and by his said declaration, stated facts sufficient to constitute a cause of action.
3. There is no averment in the said declaration that any of the actions or suits mentioned in the said declaration -herein the acts complained of are alleged to have been committed, have ever been brought to trial, or have ever been actually tried.
4. There is no averment in the said declaration that a judgment has ever been rendered in any of the said suits or causes of action mentioned in the said declaration.

Demurrer of Baltimore and Ohio R. R. Co.

Filed June 18, 1895.

In the Supreme Court of the District of Columbia.

* * * * * * *

The defendant, The Baltimore and Ohio Railroad Company, says that the declaration of the plaintiff in the above-entitled cause is bad in substance.

HAMILTON & COLBERT,
Attorney- for the Defendant The B. & O. R. R. Company.

NOTE.—Among the matters of law intended to be argued in support of the above demurrer are the following:

1. The plaintiff in his said declaration, has failed to aver or charge upon this defendant, individually or jointly with the other defendants, or any of them, the doing of any illegal or wrongful act, or the omission of any legal duty, whereby the plaintiff was injured, or his rights or property invaded, interrupted or interfered with.

8 2. There is no averment in the said declaration that any of the actions or suits mentioned in the said declaration, wherein the acts complained of are alleged to have been committed, have ever been brought to trial, or have ever been actually tried.

3. There is no averment in the said declaration that a judgment has ever been rendered in any of the said suits or causes of action mentioned in the said declaration.

Demurrer of Chesapeake & Ohio Railroad Company.

Filed June 18, 1895.

In the Supreme Court of the District of Columbia.

* * * * * * *

The defendant, The Chesapeake & Ohio Railroad Company says that the declaration of the plaintiff in the above-entitled cause is bad in substance.

WILLIAM H. PAYNE,
LEIGH ROBINSON,
Attorneys for C. & O. R. R. Co.

NOTE.—Among the matters of law intended to be argued in support of the above demurrer, are the following:

1. The plaintiff, in his said declaration, has failed to charge upon this defendant individually or jointly, with the other defendants, or any of them, the doing of any illegal or wrongful act, or the omission of any legal duty, whereby the plaintiff was injured, or his rights or property invaded, interrupted or interfered with.

2. The declaration does not allege that any of the actions or suits mentioned therein and complained of therein have ever been brought to trial; or ever been tried; or that in any of said suits, or causes of action, judgment has been rendered.

Supreme Court of the District of Columbia.

TUESDAY, *August* 6, 1901.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

Upon motion of defendants in open court by their counsel Messrs. Hamilton and Colbert, to dismiss this cause for failure to prosecute, it is upon consideration thereof ordered that said cause be and it is hereby dismissed at the cost of the plaintiff.

9 *Motion to Set Aside Order Dismissing Suit.*

Filed May 19, 1902.

In the Supreme Court of the District of Columbia.

* * * * * * *

Comes now William K. Tubman, plaintiff in the above-entitled cause, through his attorneys, Douglass & Douglass, and John A. Saul, and moves the court to set aside the order, of date the 6th day of August, 1901, dismissing said suit upon the ground that said

order was unlawfully and improvidently issued; and plaintiff appends hereto affidavits in support hereof.

DOUGLASS & DOUGLASS,
JOHN A. SAUL,
Attorneys for Plaintiff.

To attorneys for defendant:

Please take notice that the undersigned will call the above motion to the attention of his honor, Chief Justice Bingham, sitting in circuit court No. 1, on Friday, the 23rd day of May, 1902, at the hour of ten o'clock or as soon thereafter as counsel can be heard.

DOUGLASS & DOUGLASS,
JOHN A. SAUL,
Attorneys for Plaintiff.

In the Supreme Court of the District of Columbia.

* * * * * * *

Personally appeared before me William K. Tubman, who being duly sworn deposes and says, that he is the plaintiff in the above-entitled cause. That he is familiar with the issues involved in said cause and the circumstances under which the same was dismissed by this court. That the said suit was filed on or about the 26th day of March, 1895, and that service was had upon each of the defendants therein named as appears by the return of the marshal of the District of Columbia, bearing date the 29th day of March, 1895. That on the 20th day of April, 1895, the defendants, The Virginia Midland R. R. Co., and The Washington, Ohio and Western R. R. Co., through their attorneys filed motions to quash the writ, summons and return of the marshal upon the ground that said defendants were foreign corporations and that the alleged service was insufficient in that there was no agent of either of said companies within the jurisdiction of this court upon whom service could be had. That on the 17th day of June, 1895, the defendants, The Baltimore & Potomac R. R. Co. and The Pennsylvania R. R. Co., filed demurrers to the declaration; that on June the 18th, 1895 demurrer was also filed by the defendant, The Baltimore & Ohio R. R. Co.; that on the 18th day of June, 1895, the Chesapeake & Ohio R. R. Co. also filed a demurrer to the declaration.

10 That it does not appear from the record in said cause, so affiant is informed and believes, that the motions and demurrers filed to the same were ever set down for argument or disposed of. That affiant believed his case to be still pending and in good standing in court until on or about the end of the year 1901, when he was informed by his representative, Mr. F. E. Stebbins, that the cause had, upon motion of Messrs. Hamilton & Colbert, attorneys for the defendant, The Baltimore & Ohio R. R. Co., been dismissed for failure to prosecute the same; and that said motion was granted without notice to him, and without notice, so he is informed and believes to his attorneys.

That from the time of the filing of said suit until the dismissal of the same, as hereinbefore set forth, Jeremiah M. Wilson was his at-

torney. The said Wilson was absent at the time of the dismissal of said suit, and died shortly after his arrival in this country, and as affiant is informed and believes, without the knowledge of the dismissal of the same. That this deponent was assured from time to time by said Wilson that the said cause had been continued from time to time by the mutual consent of counsel. That he was advised that it was not his duty to call to the attention of the court the demurrers and motions hereinbefore referred to, but that it was the duty of the defendants filing the same, and that any delay on his part in having the same called to the attention of the court could in nowise prejudice his interests in the premises. Had the plaintiff known that any such delay could in any way prejudice his right, he would have had the said demurrers and motions called to the attention of the court and the same disposed of, and the cause set down for trial on its merits.

That deponent further says that he was assured from time to time by said Wilson that the demurrers interposed to the declaration would be heard in the fall of 1901, and the case placed as early as practicable upon the trial calendar; that he was not aware of the dismissal of the said suit until after the death of the said Wilson and as soon as he was advised thereof he immediately took steps to ascertain the facts and the grounds upon which the order of dismissal was obtained and to that end employed counsel. That as soon as this deponent was able to procure the necessary facts, the motion to restore the said case to the calendar was made.

That the suit was commenced by this deponent in good faith and that he has at all times since the commencement of said suit intended, in good faith, to prosecute the same as vigorously as possible. That the said Wilson never had any authority to dismiss the said suit, nor did he, at any time, ever intimate or suggest to this deponent any intention or desire so to do.

WILLIAM K. TUBMAN.

Subscribed and sworn to before me this 16th day of May, 1902.

[SEAL.] WILLIAM A. SCHAUMLOEFFEL,
Notary Public.

11 In the Supreme Court of the District of Columbia.

* * * * * * *

Personally appeared before me F. E. Stebbins, who first being duly sworn deposes and says that he knows the plaintiff in the above-entitled cause and that for over a year last past he has, at the request of the said plaintiff, acted as his agent with reference to the above-entitled cause. That he is familiar with the nature of the issues involved in said cause and the circumstances under which the same was dismissed by this court. That said suit was filed on or about the 26th day of March 1895, and that service was had upon each of the defendants therein named as appears by the return of the marshal of the District of Columbia, bearing date the 29th day of March, 1895. That on the 20th day of April 1895, the defend-

ants, The Virginia Midland R. R. Co., and The Washington, Ohio and Western R. R. Co., through their attorneys filed motions to quash the writ, summons and return of the marshal upon the ground that said defendants were foreign corporations and that the alleged service was insufficient in that there was no agent of either of said companies within the jurisdiction of this court upon whom service could be had. That on the 17th day of June 1895, the defendants, The Baltimore & Potomac R. R. Co. and The Pennsylvania R. R. Co. filed demurrers to the declaration; that on June the 18th, 1895, demurrer was also filed by the defendant, The Baltimore & Ohio R. R. Co.; that on the 18th day of June, 1895, the Chesapeake and Ohio R. R. Co. also filed a demurrer to the declaration.

That it does not appear from the record in said cause that the said motion- or demurrers hereinbefore referred to, were set down for argument or heard by the court; but upon information and belief this deponent avers that no disposition has ever been made by the court of the said motions or demurrers.

That on or about the 6th day of August, 1901, as appears from the record in said cause, a motion was made by Messrs. Hamilton and Colbert, attorneys for the defendant, The Baltimore & Ohio R. R. Co., to dismiss said suit upon the ground of the failure of the plaintiff to prosecute the same, which said motion was granted by the court, without any notice to the plaintiff, his agents or attorneys.

That from the time of the filing of said suit until the dismissal as hereinbefore set forth, Jeremiah M. Wilson was the attorney of the plaintiff. That by mutual agreement between all of the attorneys of the parties in interest said cause was continued from time to time until the month of June, 1901. That during said month this deponent had a conversation with the said Jeremiah M. Wilson with reference to procuring an early trial of the said cause, and upon that occasion was assured by said Wilson that the cause had been continued by mutual agreement of counsel and that the same would be heard, in the October term of the supreme court of the District of Columbia. That shortly thereafter the said Wilson went abroad and did not return until about August 10, 1901. That the
12 said motion for the dismissal of said cause upon August 6, 1901, was without the knowledge of the said plaintiff or his attorneys.

And deponent further says that shortly after the return of the said Wilson he had a conversation with him with reference to having the demurrers filed in said cause disposed of and the case placed upon the trial calendar as early as possible, and that in said conversation he was assured by said Wilson that the demurrers would be heard as soon as the Schley investigation was concluded, the said Wilson then being engaged as attorney for Admiral Schley; and this deponent is satisfied from said conversation that said Wilson was not aware that the said cause had then been dismissed.

That this deponent did not know of the dismissal of said cause until after the death of said Wilson and immediately took steps, as

a friend and agent of the plaintiff, to investigate the cause of the dismissal and forthwith employed counsel to aid him in the premises; that by reason of the death of said Wilson the plaintiff in said cause has been greatly delayed in procuring the necessary facts upon which to base this motion and that the said motion had been filed as early as it was practicable to obtain the necessary facts.

F. E. STEBBINS.

Subscribed and sworn to before me this 16th day of May, 1902.

CHAS. T. SNYDER,

[SEAL.] *Notary Public, D. C.*

In the Supreme Court of the District of Columbia.

* * * * * * *

Personally appeared before me Charles S. Wilson, who being first duly sworn according to law, deposes and says that he is a son of the late Jeremiah M. Wilson, the attorney of record for the plaintiff in the above-entitled cause; that Judge Wilson had sole charge of the above case, and that at the time of the dismissal of the same on Aug. 6, 1901, Judge Wilson was absent from the city, and did not arrive in this country until on or about Aug. 10th of said year; that so far as he is aware no notice was left at the office of Judge Wilson of the hearing of said motion; that Judge Wilson died shortly after his return to this country in the fall of 1901, and as he believes in ignorance of the dismissal of said suit; that said suit was filed by Shellabarger & Wilson; that the former has been dead many years; that this deponent was in charge of the *the* office and business of said Wilson during his absence above referred to.

CHARLES S. WILSON.

Subscribed and sworn to before me this 24 day of February, 1902.

ROBERT E. LEWIS,

[SEAL.] *Notary Public.*

13 *Affidavits.*

Filed June 24, 1902.

In the Supreme Court of the District of Columbia.

* * * * * * *

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, George E. Hamilton, who being duly sworn, deposes and says that he is a member of the firm of Hamilton & Colbert, and in the above-entitled cause represented the Baltimore and Ohio Railroad Company, the Washington, Ohio and Western Railroad Company, the Virginia Midland Railway Company, and the Norfolk and Western Railway Company, the Washington, Ohio and Western and the Virginia Midland having

been first represented by Leslie Ryan and J. P. Shepperd respectively; that he has read the affidavits of William K. Tubman and F. E. Stebbins filed in support of the motion to set aside the order of the 6th day of August, 1901, dismissing said suit, and in reply thereto says that shortly after the commencement of said suit and the filing of the several motions and demurrers interposed on behalf of the defendants, agreements were made between himself and the late Jere. M. Wilson, deceased, attorney for the plaintiff, for a hearing on said demurrers and motions, and particular days set for such hearings; that these hearings were postponed at the instance of counsel for the plaintiff, and for several years the case seemed to have passed out of memory; that about the beginning of the year 1900, at the instance of the Southern Railroad Company, this affiant endeavored to have action taken in said cause, and several separate days were arranged for by and between this affiant and the counsel for the plaintiff for a hearing, but because of the engagements of counsel for plaintiff these hearings were postponed; that in the spring of 1901, acting at the request of the defendants represented by this affiant, this affiant requested counsel for the plaintiff to make a definite arrangement for a hearing in said cause; that several days were arranged for, but because of the engagements of counsel for the plaintiff the hearing was postponed; that the last date fixed upon between this affiant and counsel for the plaintiff was in June 1901, and on the day of said hearing this affiant met counsel for the plaintiff who stated that he was unable to attend to the matter, but that while he could not consent to the dismissal of the suit, he was willing that the court should do with it as it deemed proper, and this affiant could call it up at any time before the court and make the above statement as for and from the counsel for the plaintiff; that thereupon this affiant instructed Mr. John J. Hamilton, of affiant's office, to call the matter to the attention of the court, and to ask for the dismissal of the suit. The matter was committed to the care of Mr. John J. Hamilton because this affiant was then about leaving town for his summer vacation.

14 This affiant further states that some time in August of 1901, and after the Chief Justice had returned from Europe, the action described in the affidavit was taken, and the suit dismissed as therein alleged, but this affiant states that it is untrue, as stated by Mr. Stebbins that the action was taken without the knowledge of said plaintiff or his attorney, but on the contrary avers, as hereinbefore stated, that it was done with the full knowledge and acquiescence and consent of counsel for plaintiff.

GEORGE E. HAMILTON.

Subscribed and sworn to before me this 22nd day of May, A. D. 1902.

[SEAL.]

LOUISE F. DYER,
Notary Public, D. C.

Filed June 24, 1902.

In the Supreme Court of the District of Columbia.

* * * * * * *

Personally appeared before me, a notary public in and for the District of Columbia, John J. Hamilton, who being duly sworn deposes and says that he is a member of the bar of the supreme court of the District of Columbia employed by the firm of Hamilton & Colbert; that in the early part of the year 1901, he was requested by Mr. George E. Hamilton, one of the members of said firm, to make a report to The Southern Railway Company, one of the defendants in the above-entitled cause, as to the condition of pending litigation and in the preparation of said report affiant's attention was called to the above-entitled cause and his efforts directed to have the suit set down for hearing on the demurrer or the motion to quash the service as to certain defendants, or dismissed for want of prosecution under the rules of court.

This affiant was frequently informed by Mr. George E. Hamilton that an arrangement had been made with the late Jere. M. Wilson, who represented the plaintiff, to have said case called to the attention of the court and disposed of, but for reasons unknown to affiant the engagements made with counsel for plaintiff, were never kept. That shortly before Mr. George E. Hamilton left the city for the summer this affiant again called his attention to said case and was then informed by him that Judge Wilson had stated in reply to his demand that action be taken in the case, that while he could not consent to having the suit dismissed for want of prosecution, yet he would not oppose application to that end on behalf of defendants, and that counsel for defendants might call the case to the attention of the court at any time and was at liberty to state to the court the position then taken by counsel for plaintiff; and this affiant was instructed by Mr. George E. Hamilton to present the case to the court at some convenient time and have the suit dismissed for want of prosecution.

Affiant is unable to state at this time why said cause was
15 not immediately called to the attention of the court except that the summer recess came on at that time and the matter was dropped for the time being; that when the Chief Justice returned from Europe, the case was called to the attention of the court by this affiant on August 6, 1901, as shown by the record and affiant moved the dismissal of the case for want of prosecution, which motion was granted, affiant stating at the time, the position taken by counsel for plaintiff in the matter.

Affiant further avers that said suit was filed by Shellabarger and Wilson as appears by the record, but that the late Judge Wilson had entire charge thereof, and was the only attorney on behalf of plaintiff known to the defendants, The Baltimore and Ohio Railroad Company, The Virginia Midland Railroad Company and The Norfolk and Western Railroad Company, or their attorneys, Hamilton and Colbert; that neither said defendant nor their attorneys ever knew,

or had anything to do with the plaintiff, or F. E. Stebbins in connection with said case.

This affiant denies that said suit was dismissed without notice to the attorneys for the plaintiff, but on the contrary he avers as hereinbefore set forth that the attorneys for plaintiff were fully advised of the action which defendants proposed to take in the matter.

Affiant further denies that said suit was continued from time to time by the mutual agreement of all the attorneys interested in said case and avers the fact to be that the attorneys for the defendants on numerous occasions, insisted upon having the demurrers or the motion to quash service, brought to the attention of the court and that on every occasion a postponement was obtained by counsel for plaintiff on the ground of important engagements of counsel for plaintiff, in court or elsewhere.

JOHN J. HAMILTON.

Subscribed and sworn to before me this 22nd day of May, A. D. 1902.

LOUISE F. DYER,
Notary Public, D. C.

[SEAL.]

Supreme Court of the District of Columbia.

TUESDAY, *June* 24, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham, presiding.

* * * * * * *

Upon hearing the plaintiff's motion to vacate the judgment entered herein on the 6th day of August, 1901, it is considered that said motion be, and the same is hereby overruled.

16 *Appeal.*

Filed July 2, 1902.

In the Supreme Court of the District of Columbia, This July 2, 1902.

* * * * * * *

Now comes the plaintiff in the above-entitled action, by William A. Meloy his counsel and attorney, and hereby appeals to the Court of Appeals, D. C., from the order passed in said action on the 24" of June 1902 refusing to vacate the *ex parte* judgment entered therein on the 6th day of August 1901, and from said judgment.

WM. A. MELOY,
Of Counsel and Att'y for Pl'ff.

Memorandum.

July 7, 1902.—Leave to plaintiff to deposit $25 in lieu of appeal bond, and $25 deposited in lieu of appeal bond.

In the Supreme Court of the District of Columbia.

WILLIAM K. TUBMAN
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY *et al.* } At Law. No. 37799.

The President of the United States to The Baltimore and Ohio Railroad Company, The Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company, and The Virginia Midland Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 2d day of July, 1902, wherein William K. Tubman is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 2d day of July, in the year of our Lord one thousand nine hundred and two.

JOHN R. YOUNG, *Clerk.*

17 Service of the foregoing citation is accepted this 10th day of July 1902.

F. D. McKENNEY,
Per G. E. S.,
Att'y for B. & P. R. R. Co. & for the Pa. R. R. Co.

____ ____,
Att'y for C. & O. R. R. Co.

(Endorsed:) No. 37,799. Law 12,738. Wm. K. Tubman *vs.* The Baltimore & Ohio Railroad Co., *et al.* Citation. Issued July 2nd, 1902. Served copies of the within citation on the Norfolk & Western R. R. Co., & its receivers, and the B. & O. R. R. Co., by service on George E. Hamilton, att'y, personally July 15, 1902, also served copy of within citation on the Chesapeake and Ohio Railway Co., by service on Leigh Robinson, att'y, personally July 22, 1902. Aulick Palmer, marshal. Wm. A. Meloy, attorney for appellant.

Directions to Clerk for Preparation of Record.

Filed July 10, 1902.

In the Supreme Court of the District of Columbia.

* * * * * * *

In making the transcript on appeal herein the clerk of the supreme court of the District of Columbia will please omit all titlings except that of declaration and summons, all endorsements except that of marshal's return of service of summons, and barring these, will include:

Declaration, with notice to plead, all demurrers in order of filing, any and all minutes of court in premises, all notices either filed or entered in order book up to and including judgment of dismissal on August 6, 1901; then motion and affidavits filed May 19, 1902; affidavits in reply filed June 4, 1902; the court's order thereon; the notice of appeal, citation, service, order fixing amount of bond for appeal; appeal bond with its approval and date of filing.

WILLIAM A. MELOY,
Counsel and Attorney for W. K. Tubman.

Rec'd copy of the above notice this 9″ day of July 1902, not waiving any objections.

GEORGE E. HAMILTON,
Att'y for B. & O. R. R. Co.

Rec'd copy of the above notice this 10th day of July 1902, not waiving any objections.

F. D. McKENNEY,
Per G. E. S.,
Attorney for B. & P. R. R. Co. and Penn. R. R. Co.

18 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 31, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 37,799, at law, wherein William K. Tubman is plaintiff and The Baltimore & Ohio Railroad Company *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 30th day of July, A. D. 1902.

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN, *Ass't Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1244. William K. Tubman, appellant, *vs.* The Baltimore and Ohio Railroad Company *et al.* Court of Appeals, District of Columbia. Filed Aug. 8, 1902. Robert Willett, clerk.

19 Court of Appeals, District of Columbia, October Term, 1902.

WILLIAM K. TUBMAN, Appellant,
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL. } No. 1244.

Now come the defendants in error, The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, and The Chesapeake and Ohio Railroad Company, by their respective attorneys, and move the court to dismiss the appeal in the above-entitled cause, on the following grounds, to wit:

1st. That the order passed in said cause on the 24th day of June, 1902, is an order resting in the discretion of the trial court, and is not an appealable order.

2nd. That the time within which an appeal from the judgment entered in this cause on the 6th day of August, 1901, could have been taken, had long since passed, and several terms had intervened before this appeal was taken.

HAMILTON & COLBERT,
Attorneys for the Baltimore and Ohio Railroad Co.
FREDERICK D. McKENNEY,
Attorney for the Pennsylvania Railroad Co. and for the Baltimore and Potomac R. R. Co.
LEIGH ROBINSON,
Attorney for the Chesapeake and Ohio R. R. Co.

(Endorsed:) No. 1244. Court of Appeals, D. C. October term, 1902. William K. Tubman, appellant, *vs.* The Baltimore & Ohio Railroad Co. *et al.* Motion to dismiss appeal. Court of Appeals, District of Columbia. Filed Oct. 24, 1902. Robert Willett, clerk.

20 THURSDAY, *November 6th, A. D.* 1902.

WILLIAM K. TUBMAN, Appellant,
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY, THE Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company, and The Virginia Midland Railway Company. } No. 1244.

The motion to dismiss the appeal in the above-entitled cause was submitted to the consideration of the court by Mr. F. D. McKenney in support of motion, and by Mr. William A. Meloy in opposition thereto. Appellant allowed five days to file brief on motion.

21 In the Court of Appeals of the District of Columbia.

WILLIAM K. TUBMAN, Appellant,
vs.
THE BALTIMORE AND OHIO RAILROAD Company, The Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company, and The Virginia Midland Railway Company. } No. 1244, Oct. Term, 1902.

(Mr. Chief Justice Alvey delivered the opinion of the court.)

In this case, there has been a motion made by the appellees to dismiss the appeal, upon the ground that no appeal lies in such case as that shown by the record, and we are clearly of opinion that such motion must prevail.

The appeal is taken not from the judgment dismissing the case in the court below, but from an order of the court overruling a motion to strike out or vacate the judgment dismissing the case, and which motion to vacate was not made until after the lapse of more than two terms of the court in which the original judgment was entered. It is not shown that there was any fraud or surprise in procuring the judgment of dismissal of the action by the court.

The order or judgment of the court dismissing the cause for want of prosecution was entered upon motion made in open court, on the 6th day of August, 1901; and the motion to vacate that judgment was not entered until May 19, 1902;—after the expiration of the term at which the judgment of dismissal was entered, and when the court had no longer control of the judgment. The motion to vacate was overruled on June 24th, 1902, and the present appeal was taken from the order overruling the motion, on July 2d, 1902.

The action was instituted in March 1895, and in June of that year there were several demurrers entered to the declaration; but it does not appear that there was any action whatever taken to bring
22 the demurrers to hearing. It was certainly incumbent upon the plaintiff to move in the case, and to have the demurrers disposed of, and the case brought to trial. The motion to dismiss the action for failure to prosecute was made in open court, and it is shown by the affidavits of the attorneys for the defendants that the motion to dismiss was made after full notice to the attorney for the plaintiff that such motion would be made, and it was not intimated that such motion would be resisted.

The refusal by the court to strike out and vacate the order of dismissal is not the subject of an appeal, any more than the refusal to grant a new trial is the subject of an appeal. If an appeal could be taken and maintained upon the mere refusal to strike out a judgment nine months after its entry, there could be no reason why an appeal should not be maintained from the refusal of a motion to strike out a judgment made five years after the judgment entered; and thus there would be no finality in judgments, and no limit to the right of appeal.

The appeal must be dismissed, *and it is so ordered.*

Appeal dismissed.

23 TUESDAY, *November 18th, A. D.* 1902.

WILLIAM K. TUBMAN, Appellant,
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY, The Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company, and The Virginia Midland Railway Company. } No. 1244, October Term, 1902.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia, and on a motion to dismiss which was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that this appeal be, and the same is hereby, dismissed with costs.

Per Mr. CHIEF JUSTICE ALVEY.

November 18, 1902.

24 In the Court of Appeals of the District of Columbia.

WILLIAM K. TUBMAN, Appellant,
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL. } No. 1244.

And now comes the said William K. Tubman, by William A. Meloy, his counsel, and moves the court to allow a writ of error from the Supreme Court of the United States to this court to review the judgment passed herein on the 18th day of November, 1902, and to fix the amount of the bond to be given by the plaintiff in error for costs.

WILLIAM A. MELOY,
Attorney for the Plaintiff in Error.

Writ of error allowed as prayed in the foregoing motion and the penalty of the bond for costs is fixed at three hundred dollars, not, however, to act as a supersedeas.

SETH SHEPARD,
Associate Justice.

(Endorsed:) No. 1244. Wm. K. Tubman *vs.* B. & O. R. R. Co. *et al.* Motion for writ of error, order allowing same and fixing amount of bond. Court of Appeals, District of Columbia. Filed Dec. 26, 1902. Robert Willett, clerk.

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between William K. Tubman, appellant and The Baltimore and Ohio Railroad Company, The Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company and The Virginia Midland Railway Company, appellees a manifest error hath happened, to the great damage of the said appellant as by *its* complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of December, in the year of our Lord one thousand nine hundred and two.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

26 (*Bond on Writ of Error.*)

Know all men by these presents that we, William K. Tubman, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto The Baltimore and Potomac Railroad Company, The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company, & The Virginia Midland Railway Company in the full and just sum of three hundred dollars to be paid to the said obligees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of December, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between William K. Tubman aforesaid, and the aforesaid obligees, designated in said court as No. 1244, and in the supreme court of the District of Columbia as No. 37799 at law a judgment was rendered against the said William K. Tubman and the said William K. Tubman having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Baltimore and Ohio Railroad Company, The Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington and Ohio Western R. R. Co. *et al.* aforesaid citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, that if the said William K. Tubman shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM K. TUBMAN. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [SEAL.]
Per JOS. R. STONEBRAKER,
Vice-President. [SEAL.]
Attest: HARRY NICODEMUS, *Secretary.* [SEAL.]

[Seal of Fidelity & Deposit Company of Maryland.]

Sealed and delivered in the presence of—
JOS. McDONALD.

Approved by—
SETH SHEPARD,
Associate Justice Court of Appeals of the District of Columbia.

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

On this 27th day of December, A. D. 1902, before the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore, duly commissioned and qualified, came Joseph R. Stonebraker vice-president, and Harry Nicodemus secretary, of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed, the preceding instrument, and they each acknowledge- the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at the city of Baltimore, the day and year first above written.

[Seal of Notary Public.]

FRED. S. AXTELL,
Notary Public.

Commission expires May, 1904.

[Endorsed:] No. 1244. William K. Tubman, appellant, *vs.* The Baltimore and Ohio Railroad Company *et al.* Bond on writ of error to Supreme Court U. S. Court of Appeals District of Columbia. Filed Dec. 30, 1902. Robert Willett, clerk.

27 UNITED STATES OF AMERICA, *ss:*

To The Baltimore and Ohio Railroad Company, The Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company, and The Virginia Midland Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein William K. Tubman is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, associate justice of the

Court of Appeals of the District of Columbia, this 30th day of December, in the year of our Lord one thousand nine hundred and two.

SETH SHEPARD,
Associate Justice of the Court of Appeals of the District of Columbia.

Due service of the foregoing citation is hereby admitted.

FREDERIC D. McKENNEY,
Att'y for Pennsylvania R. R. Co. and Balto. & Potomac R. R. Co.
LEIGH ROBINSON,
Attorney for the Chesapeake & Ohio R. R. Co.
HAMILTON & COLBERT,
Att'ys for Baltimore and Ohio Railroad Company.

Court of Appeals, District of Columbia. Filed Jan. 12, 1903. Robert Willett, clerk.

28 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 27 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of William K. Tubman, appellant *vs.* The Baltimore and Ohio Railroad Company, The Baltimore and Potomac Railroad Company, The Pennsylvania Railroad Company, The Washington, Ohio and Western Railroad Company, The Chesapeake and Ohio Railway Company, The Norfolk and Western Railroad Company, and The Virginia Midland Railway Company, No. 1244, January term, 1903, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of January A. D. 1903.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,802. District of Columbia Court of Appeals. Term No. 574. William K. Tubman, plaintiff in error, *vs.* The Baltimore & Ohio Railroad Company, The Baltimore & Potomac Railroad Company *et al.* Filed January 28", 1903.